Shelter Christian Fellowship For Aid and Welfare v Menteri Sumber Manusia Malaysia & Anor

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W–01–152 OF 1998
SITI NORMA YAAKOB, DENIS ONG AND HAIDAR JJCA
28 SEPTEMBER 2006

Labour Law — Industrial Court — Discretion of Minister — Errors, effect of — Administrative slip by ministry official — Minister deciding to refer representations to Industrial Court — Notification by ministry official that Minister had decided not to refer representations — Error explained to parties concerned — Whether Minister had made two decisions concerning the representations — Whether decision of Minister to refer representations to the Industrial Court ought to be quashed

The Director General of Industrial Relations had referred the second respondent's representations to the first respondent under s 20(3) of the Industrial Relations Act 1967. By letter of 17 October 1996, an officer of the first respondent, informed all parties concerned, that the first respondent had decided not to refer the second respondent's representations to the Industrial Court. However by letter dated 14 March 1997, the same officer informed the appellant that the first respondent had decided to refer the second respondent's representations to the Industrial Court for an award. In the same letter too, the officer withdrew the contents of the letter dated 17 October 1996 and expressed regret over any confusion and inconvenience the letter of 17 October 1996 had caused. The appellant applied to the High Court to have the decision of the first respondent to refer the second respondent's representations to the Industrial Court, as communicated by letter of 14 March 1997, set aside by way of certiorari. The appellant alleged, inter alia, that the first respondent had made two decisions. The first respondent contended that he had in fact decided to refer the second respondent's representations to the Industrial Court. However, his decision had been incorrectly communicated to the appellant by his officer through letter of 17 October 1996. When the error had been realized, the officer had acted immediately by sending the second letter of 14 March 1997 to notify all parties of the first respondent's actual decision. The High Court dismissed the application, and the appellant appealed.

Held, dismissing the appeal:

The first respondent is empowered to exercise his discretion under s 20(3) of the Act to either refer or decline to refer any representation made to him to the Industrial Court for an award. In the instant appeal he had in fact decided to refer the second respondent's representations to the Industrial Court for an award. Unfortunately his officer made an administrative slip by communicating a wrong decision that was not considered by the first respondent in the first place. It was to correct this

administrative slip that the second letter was sent. Under these circumstances, the first respondent could not be faulted for the administrative slip of his officer (see para 9).

[Bahasa Malaysia summary

Ketua Pengarah Perhubungan Industri telah merujuk representasi-representasi responden kedua kepada responden pertama di bawah s 20(3) Akta Perhubungan Perusahaan 1967. Melalui surat bertarikh 17 Oktober 1996, seorang pegawai responden pertama, telah memberitahu semua pihak yang terlibat, bahawa responden pertama telah memutuskan untuk tidak rujuk representasi-representasi responden pertama ke Mahkamah Perusahaan. Namun begitu melalui surat bertarikh 14 Mac 1997, pegawai yang sama memberitahu perayu bahawa responden pertama telah memutuskan untuk merujuk representasi-representasi responden kedua ke Mahkamah Perusahaan untuk award. Di dalam surat yang sama, pegawai tersebut menarik balik kandungan surat bertarikh 17 Oktober 1996 dan menyatakan rasa kesalnya mengenai sebarang kekeliruan dan kesukaran yang disebabkan oleh surat bertarikh 17 Oktober 1996. Perayu memohon ke Mahkamah Tinggi untuk mengenepikan keputusan responden pertama merujuk representasi-representasi responden kedua ke Mahkamah Perusahaan sebagaimana yang dinyatakan di dalam surat bertarikh 14 Mac 1997, melalui certiorari. Perayu mendakwa antara lain bahawa responden pertama telah membuat dua keputusan. Responden pertama mengatakan bahawa beliau telah memutuskan untuk merujuk representasi-representasi responden kedua ke Mahkamah Perusahaan. Namun begitu, keputusan beliau telah disalah beritahu kepada perayu oleh pegawainya melalui surat bertarikh 17 Oktober 1996. Apabila kesilapan tersebut disedari, pegawai tersebut telah dengan segera menghantar surat kedua yang bertarikh 14 Mac 1997 untuk memberi notis kepada kesemua pihak mengenai keputusan sebenar responden pertama. Mahkamah Tinggi menolak permohonan dan perayu merayu.

Diputuskan, menolak rayuan:

Responden pertama diberi kuasa untuk menggunapakai budi bicaranya di bawah s 20(3) Akta tersebut untuk sama ada merujuk atau tidak sebarang representasi yang dibuat kepadanya ke Mahkamah Perusahaan untuk award. Dalam rayuan semasa beliau telah memutuskan untuk merujuk representasi-representasi responden kedua ke Mahkamah Perusahaan untuk award. Tetapi malangnya, pegawainya telah membuat kesilapan pentadbiran dengan memberitahu keputusan yang salah yang tidak dipertimbangkan oleh responden pertama langsung. Surat kedua dihantar untuk memperbetulkan kesilapan pentadbiran tersebut. Di dalam keadaan ini responden pertama tidak boleh dipersalahkan dengan kesilapan pentadbiran pegawainya (lihat perenggan 9).]

Notes

For cases on discretion of Minister, see 8(1) *Mallal's Digest* (4th Ed, 2006 Reissue) paras 1418–1434.

Cases referred to

Legislation referred to
Industrial Relations Act 1967 s 20(3)

Appeal from: Originating Summons No R3–25–67 of 1997 (High Court, Kuala Lumpur)

Anthony Gomez (Gomez & Associates) for the appellant.
Azizah Nawawi (Senior Federal Counsel, Attorney General's Chambers) for the first respondent.
S Muhendaran (Murugavell Arumugam & Co) for the second respondent.

Siti Norma Yaakob JCA (now FCJ) (delivering judgment of the court)::

[1] The dispute in this appeal arises from the representations made by the second respondent to the Director General of Industrial Relations that he had been dismissed without just cause or excuse by his employer, the appellant. When no settlement was reached, the Director General referred the matter to the first respondent for the latter's direction under s 20(3) of the Industrial Relations Act 1967 ('the Act').

[2] The first notification the appellant received of the first respondent's decision was a letter dated 17 October 1996, informing all parties concerned that the first respondent had decided not to refer the second respondent's representations to the Industrial Court. That letter was sent by an official from the Enforcement and Co-ordination Unit of the Ministry of Manpower.

[3] Five months later in a letter dated 14 March 1997, the same official informed the appellant that the first respondent had decided to refer the second respondent's representations to the Industrial Court for an award. In the same letter too, the writer withdrew the contents of the letter dated 17 October 1996, which he had written earlier on the same subject matter and regretted the confusion and inconvenience that the first letter had caused.

[4] Based on the first letter, the appellant had applied to have the decision of the first respondent to refer the second respondent's representations to the Industrial Court as contained in the second letter set aside by way of certiorari.

[5] In his affidavit dated 27 August 1997 the first respondent has explained that on 25 September 1996, he was handed a file containing the representations made by the second respondent for his consideration. On 30 September 1996, after he had perused and considered the representations, he had decided to refer the representations to the Industrial Court for an award.

[6] However, his decision had not been correctly communicated to the appellant as seen from the contents of the first letter dated 17 October 1996. He explained that the mistake was only discovered after his Ministry had on 12 March 1997, embarked on an exercise to computerize all the files of the Ministry. On realizing this mistake his officer had acted immediately by sending the second letter dated 14 March 1997, to regularize the position and to notify all parties the true nature of the first respondent's decision that the matter of the second respondent's dismissal be referred to the Industrial Court for an award.

[7] The High Court dismissed the appellant's application for certiorari on the ground that the first respondent made only one decision and not two decisions as maintained by the appellant. That decision was the one reached on 30 September 1996, when he had decided to refer the matter of the second respondent's dismissal to the Industrial Court for an award. Unfortunately that one and only decision had been communicated wrongly to the appellant and a reasonable and acceptable explanation has been given how that had happened. On realizing that they had not communicated the true decision of the first respondent, his official had acted promptly by sending the second letter of notification.

[8] We see no reason to disagree with the findings of the High Court as the affidavit evidence of the second respondent explaining how the mistake had happened is in no way disputed.

[9] The first respondent is empowered to exercise his discretion under s 20(3) of the Act to either refer or decline to refer any representation made to him to the Industrial Court for an award. In the instant appeal he had decided to refer the second respondent's representations to the Industrial Court for an award but unfortunately his officer made an administrative slip by communicating a wrong decision that was not considered by the first respondent in the first place. It was to correct this administrative slip that the second letter was sent. Under these circumstances, the first respondent cannot be faulted for the administrative slip of his officer and on that finding the coram unanimously decided that this appeal be dismissed but made no order as to costs and directed that the deposit be refunded to the appellant.

Appeal dismissed.

Reported by John Paul Simon